

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

10-cv-61-bbc
03-cr-175-bbc

v.

DAVID M. NELSON,

Defendant.

Defendant David Nelson has filed a notice of appeal from the court's February 16, 2010 judgment denying his motion for postconviction relief brought pursuant to 28 U.S.C. § 2255. He has not paid the \$455 fee for filing that is required if he is to take an appeal from the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe defendant's motion as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not

taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel during the criminal proceedings against him and I do not intend to certify that his appeal is not taken in good faith. Defendant’s challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Cf., Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000). Therefore, I will grant him leave to proceed on appeal in forma pauperis.

ORDER

IT IS ORDERED that defendant David Nelson’s request for leave to proceed in forma pauperis on appeal is GRANTED.

Entered this 19th day of April, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge